

REMARKS

Responsive to the lack of unity determination imposed in the Official Action of December 22, 2004, applicants provisionally elect Group I and SEQ ID NO: 2, with traverse.

At this time, applicants respectfully request an examination of all of claims 17-19 and 21-35 in their full scope. The amended claims relate to an isolated promoter nucleotide sequence comprising SEQ ID NO: 2 or a sequence at least 80% identical to SEQ ID NO: 2.

The present application was filed under 35 USC §371 as a U.S. national phase application of PCT/FR 00/02596 and, as such, is entitled to the unity requirements set out in PCT Rules 13.1-13.4.

While the Examiner is correct in citing 35 USC 121, 372 and PCT Rule 13.1 in page 2 of the Office Action, applicants believe that the criteria applied on page 3 of the Office Action is improper as a matter of law. As provided in 35 USC 372, unity of invention is examined within the scope of the PCT and Regulations thereof. As a result, the cited national criteria may not be applied in the present application. Indeed, according to Article 27, paragraph 1 of the PCT, it is not permissible for a national office to require compliance with requirements that are different from or in addition to the rules of the PCT and regulations thereof.

Moreover, the inventions listed as Groups I and II by the Office Action relate to a single general inventive concept in agreement with PCT Rule 13.1. According to PCT Rule 13.2, a single inventive concept exists between the inventions of the claims when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features, said "special technical features" meaning those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over prior art.

In the present application, the special technical feature is believed to be a promoter nucleotide sequence which comprises SEQ ID NO: 2, or a sequence at least 80% identical to SEQ ID NO: 2, which allows an expression of genes both specific to the interface between the embryo and the endosperm, and intervening early during the development of the endosperm (see page 1, lines 6-9). The claimed promoter may be used to carry out a spatially and timely expression of a transgene of interest (see page 2, lines 19-27).


As a result, applicants believe that amended claims 17-19, 21-35, i.e., the promoter, an expression cassette or a vector containing it or a plant transformed with such a vector, constitute a single invention.

Thus, in view of the above, applicants respectfully request an examination on the merits of all the claims in their full scope.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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PD/mjr
February 22, 2005